United States Court of Appeals for the Second Circuit



APPENDIX

76-1382

IN THE

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 76-1382

UNITED STATES OF AMERICA,
Appellee,

DUANE HARRIS,

v.

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT.

JOINT APPENDIX



Robert Grussing III, P. O. Box 76 Brattleboro, Vermont 05301 ATTORNEY FOR THE APPELLANT

George W. F. Cook, United States Attorney Federal Building Rutland, Vermont 05701 ATTORNEY FOR THE APPELLEE PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

1975	
October 9	Indictment Filed
" 23	Defendant pleaded not guilty to Counts 1, 14 and 16
	Filed Superseding Indictmen
1976	
Jan. 19	Filed Government's Bill of Particulars
April 5	In Open Court Trial by Jury begun
" 6	Trial Resumed
" 7	Trial Resumed
" 8	Trial Resumed
" 8	Ordered; Motion for Mistrial is Granted
May 4	In Open Court, before Judge Coffrin Trial by Jury begun
" 5	Trial Resumed
" 7	Trial Resumed
" 10	Trial Resumed
" 11	Trial Resumed
" 11	At 11:35 A.M. Government rests
" 11	Mr. Grussing moves for Judgment of Acquittal
" 11	Decision Reserved
" 11	Mr. Grussing joins in Mr. Gibson's Motion to Strike
" 11	Decision Reserved
"; 11 :	Upon consideration of Mr. Grussing's Motion for Judgment of Acquittal and Motion to Strike, it is Ordered: Motions Denied

May	11	At 2:45 P.M. Defendant Harris Rests				
"	11	At 2:45 P.M. Defendant Garland Rests; Evidence closed				
"	11	Mr. Grussing renews his Motion for Judgment of Acquittal				
"	11	Ord ed: Motion Denied				
"	12	Trial resumed				
"	12	At 7:50 P.M. the Jury came into Court and found Defendant Duane Harris guilty as to Courts 1 and 16				
"	19	Filed Defendant's Motion for new trial and Motion for Judgment of Acquittal				
Aug	. 3	In open Court before Judge Coffrin, hearing on Defendant Harris' Motion for new trial and Motion for Judgment of Acquittal				
"	3	Ordered: Motion Denied				
"	3 .	Filed Judgment and Probation/Commitment Order - Defendant is committed to the custody of the Attorney General or his authorized representative for imprison- ment for a period of two years as to Counts 1 and 16 and a special parole term of two years. Sentences to run concurrently with each other.				
"	3	Filed Notice of Appeal				

INDICTMENT

COUNT 1

The Grand Jury charges:

On or about the 16th day of June, 1975, in the District of Vermont, JAY LEAVITT, WAYNE HOLDEN and LUANE HARRIS, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 83 grams of amphetamine, a Schedule II controlled substance; in violation of §841, Title 21, and §2, Title 18, United States Code.

COUNT 2

The Grand Jury further charges:

On or about the 30th day of June, 1975, in the District of Vermont, WAYNE HOLDEN, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and facilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden of a quantity of amphetamine, a Schedule II controlled substance, felonies under

Title 21, United States Code, §841; in violation of §§843(b) and 841 of Title 21, United States Code.

COUNT 3

The Grand Jury further charges:

On or about the 30th day of June, 1975 in the District of Vermont, JAY LEAVITT, WAYNE HOLDEN and NORMAN HOLDEN, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 144 grams of amphetamine, a Schedule II controlled substance; in violation of §841, Title 21, and §2, Title 18, United States Code.

COUNT 4

The Grand Jury further charges:

On or about the 2nd day of July, 1975, in the District of Vermont, WAYNE HOLDEN, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and facilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden of a quantity of

amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, §841; in violation of §§843(b) and 841, Title 21, United States Code.

COUNT 5

The Grand Jury further charges:

On or about the 1th day of July, 1975, in the District of Vermont, WAYNE HOLDEN, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and facilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden of a quantity of amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, §841; in violation of §§843(b) and 841, Title 21, United States Code.

COUNT 6

The Grand Jury further charges:

On or about the 7th day of July, 1975, in the District of Vermont, JAY LEAVITT, WAYNE HOLDEN and NORMAN HOLDEN, the

defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 330 grams of amphetamine, a Schedule II controlled substance; in violation of §841, Title 21, and §2, Title 18, United States Code.

COUNT 7

The Grand Jury further charges:

On or about the 14th day of July, 1975, in the District of Vermont, WAYNE HOLDEN, the defendants, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and facilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden and Bruce Garland of a quantity of amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, §841; in violation of Title 21, United States Code, §843(b) and 841.

COUNT 8

The Grand Jury further charges:

On or about the 15th day of July, 1975, in the District

of Vermont, JAY LEAVITT, WAYNE HOLDEN, NORMAN HOLDEN and BRUCE GARLAND, the defendants, unlawfully and knowingly did distribute and possess with intent to distribute approximately 308 grams of amphetamine, a Schedule II controlled substance; in violation of §841, Title 21, United States Code, and §2, Title 18, United States Code.

COUNTS 9-13

The Grand Jury further charges:

On or about the dates set forth below, in the District of Vermont, WAYNE HOLDEN, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and causing and facilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden of a quantity of amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, §841; in violation of §§843(b) and 841, Title 21, United States Code:

COUNT	DATE	
9	August 4, 1975	
10	August 12, 1975	
11	September 9, 1975	
12	September 10, 1975	
13	September 11, 1975	

COUNT 14

The Grand Jury further charges:

On or about the 1st day of October, 1975, in the District of Vermont, JAY LEAVITT, WAYNE HOLDEN, NORMAN HOLDEN and DUANE HARRIS, the defendants, unlawfully and knowingly did distribute and possess with intent to distribute approximately 996 grams of amphetamine, a Schedule II controlled substance; in violation of §841, Title 21 and §2, Title 18, United States Code.

COUNT 15

The Grand Jury further charges:

On or about the 7th day of October, 1975, in the District of Vermont, JAY LEAVITT, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and racilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden of a quantity of amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, §841; in violation of §§843(b) and 841, Title 21, United States Code.

COUNT 16

The Grand Jury further charges:

From on or about the 1st day of January, 1972, up to and including the 9th day of October, 1975, in the District of Vermont and elsewhere, JAY LEAVITT, WAYNE HOLDEN, NORMAN HOLDEN, DUANE HARRIS and BRUCE GARLAND, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together, with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate §§812, 841, 843, 952 and 960 of Title 21, United States Code.

It was part of the conspiracy that conspirators JAY LEAVITT and WAYNE HOLDEN would knowingly and intentionally import into the United States from a place outside thereof quantities of amphetamine; in violation of §§812 and 952 of Title 21, United States Code.

It was further part of the conspiracy that conspirator

JAY LEAVITT would knowingly and intentionally manufacture

amphetamine, a Schedule II controlled substance; in violation of

§§812,841 of Title 21, United States Code.

It was a further part of the conspiracy that conspirators

JAY LEAVITT, WAYNE HOLDEN, NORMAN HOLDEN, DUANE HARRIS and BRUCE

GARLAND would knowingly and intentionally distribute and possess

with intent to distribute quantities of amphetamine, a Schedule
II controlled substance; in violation of §§812 and 841 of Title
21, United States Code.

It was a further part of the conspiracy that JAY LEAVITT.

It was a further part of the conspiracy that JAY LFAVITT, WAYNE HOLDEN, NORMAN HOLDEN, DUANE HARRIS and BRUCE GARLAND would knowingly and intentionally use communications facilities in committing and in causing and facilitating the knowing and intentional manufacture, distribution and possession with intent to distribute quantities of amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code §841; in violation of Title 21, United States Code §843(b) and 841.

As part of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the District of Vermont and elsewhere:

- 1. On or about June 5, 1975, WAYNE HOLDEN, NORMAN HOLDEN and DUANE HARRIS were present in the Discotheque Bar in Brattle-boro, Vermont.
- 2. On or about June 8, 1975, WAYNE HOLDEN spoke by telephone with Harold Anderson.
- On or about June 13, 1975, DUANE HARRIS spoke by telephone with Harold Anderson.
- 4. On or about June 15, 1975, WAYNE HOLDEN spoke by telephone with Harold Anderson.
 - 5. On or about June 16, 1975, WAYNE HOLDEN met with

Harold Anderson and Guy Pennell in Brattleboro, Vermont. 6. On or about July 10, 1975, WAYNE and NORMAN HOLDEN drove to Glouster, Massachusetts and met with Daniel Pappalardo. 7. On or about July 10, 1975, JAY LEAVITT met with WAYNE and NORMAN HOLDI _ Glouster, Massachusetts. 8. On or about July 15, 1975, BRUCE GARLAND drove an automobile in Brattleboro, Vermont. 9. On or about July 17, 1975, DUANE HARRIS spoke with Harold Anderson. 10. On or about September 15 1975, NORMAN HOLDEN spoke with Harold Anderson. 11. On or about October 2, 1975, JAY LEAVITT met with WAYNE HOLDEN and NORMAN HOLDEN in Salem, New Hampshire. (Title 21, United States Code, §§846 and 963) A TRUE BILL s/ William W. Stone Foreman GEORGE W. F. COOK United States Attorney By s/ Jerome F. O'Neill JEROME F. O'NEILL Assistant U. S. Attorney OCTOBER 23, 1975 - 11 -

BILL OF PARTICULARS

The United States of America, by and through George
W. F. Cook, United States Attorney for the District of Vermont,
hereby files the following bill of particulars pursuant to the
discovery request made by defendant Wayne Holden.

- 1. The possession with intent to distribute and distribution of amphetamine referred to in Count I of the indictment took place on June 16, 1975 at approximately 12:30 P.M. in the parking lot of the McDonald's restaurant on Route 5 in Brattleboro, Vermont.
- 2. The use of a communications facility referred to in Count II of the indictment took place on June 30, 1975 at approximately 9:15 A.M. and consisted of a telephone call by Wayne Harmond Anderson, Jr. at a number in Harmford, Connecticut.
- 3. The possession with intent to distribute and distribution of amphetamine referred to in Count III of the indictment took place on June 30, 1975 at approximately 6:50 P.M. in the parking lot outside the Mammoth Mart store on Route 5 in Brattleboro, Vermont.
- 4. The use of a communications facility referred to in Count IV of the indictment took place on July 2, 1975 at approximately 11:40 P.M. and consisted of a telephone call by Wayne

Holden to Harold P. Anderson, Jr. at a number in Hartford, Connecticut. 5. The use of a communications facility referred to in Count V of the indictment took place on July 7, 1975 at approximately 10:15 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. 6. The possession with intent to distribute and distribution of amphetamine referred to in Count VI of the i dictment took place on July 7, 1975 at approximately 2:55 P.M. at approximately 2:55 P.M. at the junction of Black Mountain Road and Dickinson Road in the vicinity of Brattleboro, Vermon+. 7. The use of a communications facility referred to in Count VII of the indictment took place on July 14, 1975 at approximately 3:30 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a number in Hartford, Connecticut. 8. The possession with intent to distribute and distribution of amphetamine referred to in Count VIII of the indictment took place on July 15, 1975 at approximately 11:45 A.M. in the parking lot of the First National store in Brattleboro, Vermont. 9. The use of a communications facility referred to in Count IX of the indictment took place on August 4, 1975 at approximately 2:55 P.M. and consisted of a telephone call by - 13 -

Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. 10. The use of a communications facility referred to in Count X of the indictment took place on August 12, 1975 at approximately 1:30 P.M. and ensisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford. Connecticut. 11. The use of a communications facility referred to in Count XI of the indictment took place on September 9, 1975 at approximately 12:55 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. The use of a communications facility referred to in Count XII of the indictment took place on September 10, 1975 at approximately 11:55 A.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. The use of a communications facility referred to in Count XIII of the indictment took place on September 11, 1975 at approximately 3:15 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. 14. The possession with intent to distribute and distribution of amphetamine referred to in Count XIV of the indictment - 14 -

took place on September 30, 1975 at approximately 9:55 P.M. in the parking lot of the Red Coach Motor Inn in Brattleboro, Vermont.

Dated at Rutland, in the District of Vermont, this 3rd day of December, 1975.

Respectfully submitted,
GEORGE W. F. COOK
United States Attorney

By:

JEROME F. O'NEILL

Assistant U. S. Attorney

AMENDED BILL OF PARTICULARS The UNITED STATES OF AMERICA, by and through George W. F. Cook, United States Attorney for the District of Vermont, hereby amends the Bill of Particulars filed by the Government under date of December 3, 1975 as follows: The possession with intent to distribute and distribution of amphetamine referred to in Count I of the indictment took place on June 16, 1975 at approximately 12:30 P.M. in the parking lot of the McDonald's restaurant on Route 5 in Brattleboro, Vermont. Wayne Holden possessed with intent to distribute and distributed the amphetamine referred to in Count I of the indictment, and Jay Leavitt and Duane Harris willfully caused, aided, abetted, counseled, commanded, induced and procured the possession with intent to distribute and distribution by Wayne Holden. The distribution was to Harold Anderson. 2. The use of a communications facility referred to in Count II of the indictment took place on June 30, 1975 at approximately 9:15 A.M. and consisted of a telephone call by Wayne Holden to Harold Anderson, Jr. at a number in Hartford, Connecticut. 3. The possession with intent to distribute and distribution of amphetamine referred to in Count III of the indictment took place on June 30, 1975 at approximately 6:50 P.M. in the - 16 -

parking lot outside the Mammoth Mart store on Route 5 in Brattleboro, Vermont. Wayne Holden possessed with intent to distribute and distributed the amphetamine referred to in Count III of the indictment, and Jay Leavitt and Norman Holden willfully caused, aided, abetted, counseled, commanded, induced and procured the possession with intent to distribute and distribution by Wayne Holden. The distribution was to Harold Anderson. 5. The use of a communications facility referred to in Count V of the indictment took place on July 7, 1975 at approximately 10:15 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr., at a telephone number in Hartford, Connecticut. 6. The possession with intent to distribute and distribution of amphetamine referred to in Count VI of the indictment took place on July 7, 1975 at approximately 2:55 P.M. at the junction of Black Mountain Road and Dickinson Road in the vicinity of Brattleboro, Vermont. Wayne Holden possessed with intent to distribute and distributed the amphetamine referred to in Count VI of the indictment, and Jay Leavitt and Norman Holden willfully caused, aided, abetted, counseled, commanded, induced and procured the possession with intent to distribute and distribution by Wayne Holden. The distribution was to Harold Anderson. 7. The use of a communications facility referred to in Count VII of the indictment took place on July 14, 1975 at - 17 -

approximately 3:30 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. 8. The possession with intent to distribute and distribution of amphetamine referred to in Count VIII of the indictment took place on July 15, 1975 at approximately 11:45 A.M. in the parking lot of the First National store in Brattleboro, Vermont. Wayne Holden possessed with intent to distribute and distributed the amphetamine referred to in Count VIII of the indictment, and Jay Leavitt, Norman Holden and Bruce Garland willfully caused, aided, abetted, counseled, commanded, induced and procured the possession with intent to distribute and distribution by Wayne Holden. The distribution was to Harold Anderson. 9. The use of a communications facility referred to in Count IX of the indictment took place on August 4, 1975 at approximately 2:55 P.M. and consisted of a telephone call by Wayne Holden to Harold Anderson, Jr. at a telephone number in Hartford, Connecticut. 10. The use of a communications facility referred to in Count X of the indictment took place on August 12, 1975 at approximately 1:30 P. M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut. 11. The use of a communications facility referred to in - 18 -

Count XI of the indictment took place on September 9, 1975 at approximately 12:55 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut.

12. The use of a communications facility referred to the second secon

- 12. The use of a communications facility referred to in Count XII of the indictment took place on September 10, 1975 at approximately 11:55 A.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut.
- 13. The use of a communications facility referred to in Count IXXX of the indictment took place on September 11, 1975 at approximately 3:15 P.M. and consisted of a telephone call by Wayne Holden to Harold P. Anderson, Jr. at a telephone number in Hartford, Connecticut.
- 14. The possession with intent to distribute and distribution of amphetamine referred to in Count XIV of the indictment took place at approximately 9:55 P.M. in the parking lot of the Red Coach Motor Inn in Brattleboro, Vermont. Wayne Holden possessed with intent to distribute and distributed the amphetamine referred to in Count XIV of the indictment, and Jay Leavitt, Norman Holden and Duane Harris willfully caused, aided, abetted, counseled commanded, induced and procured the possession with intent to distribute and distribution by Wayne Holden. The distribution was to Harold Anderson.

15. The use of a communications facility referred to in Count XV of the indictment took place on October 7, 1975 and consisted of a telephone conversation between Wayne Holden and Jay Leavitt.

16. The Government expects to prove that the following

16. The Government expects to prove that the following individuals, in addition to those named in the indictment, are co-conspirators:

Daniel H. George, Jr.
Daniel Pappalardo
Marilyn Sweeney
Kenneth Lotfy
Michael Preble
Peter Amaro

Joan Leavitt
Gary Leavitt
Richard Crisp
Douglas Rumrill
Lynwood Lamar
Brent Leavitt

17. The Government expects to introduce evidence of the participation of the following individuals in the conspiracy as far back as the dates indicated:

a.	Jay Leavitt	August 1, 1971
ъ.	Wayne Holden	May 1, 1973
c.	Norman Holden	January 1, 1974
d.	Duane Harris	January 1, 1974
0	Bruce Garland	January 1, 1975

DATED at Rutland, in the District of Vermont, this 16th day of January, 1976.

UNITED STATES OF AMERICA

George W.F. Cook United States Attorney

By:
 Jerome F. O'Neill
 Assistant U.S. Attorney

MOTION FOR NEW TRIAL AND MOTION FOR JUDGMENT OF ACQUITTAL NOW COMES the defendant, Duane Harris, by his attorney, Robert Grussing III, and pursuant to the provisions of Rules 33 and 34 of the Federal Rules of Criminal Procedure, requests this Honorable Court to enter a Judgment of Acquittal or in the alternative, to order a new trial as to the defendant, Duane Harris, on the following grounds. 1. That there was insufficient evidence at the trial of the within cause from which the jury could find that the defendant, Duane Harris, did commit the offense charged in Count I of the indictment or did aid or abet in the commission of said offense. That there was insufficient evidence at the trial of the within cause from which the jury could find that the defendant, Duane Harris, committed the offense charged in Count 16 of the indictment. 3. That the Court erred in admitting evidence as against the defendant, Duane Harris, with respect to statements made by the defendant, Wayne Holden, to Harold Anderson on June 5, 1975 to the effect that Duane Harris was part of an organization. DATED at Brattleboro, Vermont this 18th day of May, 1976. DUANE HARRIS By: s/ Robert Grussing III Robert Grussing III His Attorney - 21 -

CERTIFICATE OF SERVICE This is to certify that on the 16th day of February 1977, I made service of the Brief for the Appellant and the Joint Appendix upon the United States of America, Appellee, by mailing two copies thereof to George W. F. Cook, United States Attorney for the District of Vermont, P. O. Box 10, Rutland, Vermont 05701.